

Republic of the Philippines  
**SUPREME COURT**  
Manila

SECOND DIVISION

**G.R. No. L-37120 April 20, 1983**

**VICTORINO D. MAGAT**, petitioner,  
vs.

**HON. LEO D. MEDIALDEA and SANTIAGO A. GUERRERO**, respondents.

*Sinesio S. Vergara for petitioner.*

*Eladio B. Samson for respondents.*

**ESCOLIN, J.:**

Put to test in this petition for review on certiorari is the sufficiency of the averments contained in the complaint for alleged breach of contract filed by petitioner Victorino D. Magat against respondent Santiago A. Guerrero in Civil Case No. 17827 of the Court of First Instance of Rizal, presided by respondent Judge Leo D. Medialdea, now Deputy Judicial Administrator, which complaint was dismissed for failure to state a cause of action.

The pertinent allegations in the complaint, subject of inquiry, are as follows: <sup>1</sup>

3. That sometime in September 1972, the defendant entered into a contract with the U.S. Navy Exchange, Subic Bay, Philippines, for the operation of a fleet of taxicabs, each taxicab to be provided with the necessary taximeter and a radio transceiver for receiving and sending of messages from mobile taxicab to fixed base stations within the Naval Base at Subic Bay, Philippines;

4. That Isidro Q. Aligada, acting as agent of the defendant herein conducted the necessary project studies on how best the defendant may meet the requirements of his contract with the U.S. Navy Exchange, Subic Bay, Philippines, and because of the experience of the plaintiff in connection with his various contracts with the U.S. Navy, Subic Bay, Philippines, and his goodwill already established with the Naval personnel of Subic Bay, Philippines, especially in providing the U.S. Navy with needed materials or goods on time as specified by the U.S. Navy, be they of local origin or imported either from the United States or from Japan, the said Isidro Q. Aligada approached the plaintiff herein in behalf of the defendant and proposed to import from Japan thru the plaintiff herein or thru plaintiff's Japanese business associates, all taximeters and radio transceivers needed by the defendant in connection with his contract with the U.S. Navy Exchange, Subic Bay, Philippines;

5. That the defendant herein and his aforesaid agent Isidro Q. Aligada were able to import from Japan with the assistance of the plaintiff and his Japanese business associates the necessary taximeters for defendant's taxicabs in partial fulfillment of defendant's commitments with the U.S. Navy Exchange, Subic Bay, Philippines, the plaintiff's assistance in this matter having been given to the defendant gratis et amore;

6. That Isidro Q. Aligada, also acting as agent of the defendant, made representations with the plaintiff herein to the effect that defendant desired to procure from Japan thru the plaintiff herein the needed radio transceivers and to this end, Isidro Q. Aligada secured a firm offer in writing dated September 25, 1972, a copy of which is hereto attached marked as Annex 'A' and made an integral part of this complaint, wherein the plaintiff quoted in his offer a total price of \$77,620.59 [U.S. dollars] FOB Yokohama, the goods or articles therein offered for sale by the plaintiff to the defendant to be delivered sixty to ninety [60-90] days after receipt of advice from the defendant of the radio frequency assigned to the defendant by the proper authorities;

7. That the plaintiff received notice of the fact that the defendant accepted plaintiff's offer to sell to the defendant the items specified in Annex 'A', as well as the terms and conditions of said offer, as shown by the signed conformity of the defendant appearing on Annex 'A' which was duly delivered by the defendant's agent to the plaintiff herein, whereupon all that the plaintiff had to do in the meantime was to await advice from the defendant as to the radio frequency to be assigned by the proper authorities to the defendant;

8. That believing that the defendant would faithfully fulfill his contract with the plaintiff herein, considering his signed conformity appearing in Annex 'A' hereof as well as the letter dated October 4, 1972, of his agent aforementioned which is attached hereto and marked as Annex 'B' and made an integral part of this complaint, and in order that plaintiff's promised delivery would not be delayed, the plaintiff herein took steps to advise the Japanese entity entrusted with the manufacture of the items listed in Annex 'A' to the effect that the contract between the defendant herein and the plaintiff has been perfected and that advice with regards to radio frequency would follow as soon as same is received by the plaintiff from the defendant;

9. That in his letter dated October 6, 1972, a copy of which is hereto attached marked as Annex 'C', the defendant advised his aforementioned agent to the effect that the U.S. Navy provided him with the radio frequency of 34.2 MHZ [Megahertz] and defendant requested his said agent to proceed with his order placed with the plaintiff herein, which fact was duly communicated to the plaintiff by the defendant's aforementioned agent;

10. That by his letter dated October 7, 1972, addressed to the plaintiff by the defendant's agent, a copy of which is hereto attached and marked as Annex 'D', defendant's agent qualified defendant's instructions contained in his letter of October 6, 1972 [Annex 'C'] in the sense that plaintiff herein should proceed to fulfill defendant's order only upon receipt by the plaintiff of the defendant's letter of credit;

11. That it being normal business practice in case of foreign importation that the buyer opens a letter of credit in favor of the foreign supplier before delivery of the goods sold, the plaintiff herein awaited the opening of such a letter of credit by the defendant;

12. That the defendant and his agent have repeatedly assured plaintiff herein of the defendant's financial capabilities to pay for the goods ordered by him and in fact he accomplished the necessary application for a letter of credit with his banker, but he subsequently instructed his banker not to give due course to his application for a letter of credit and that for reasons only known to the defendant, he fails and refuses to open the necessary letter of credit to cover payment of the goods ordered by him;

13. That it has come to the knowledge of the plaintiff herein that the defendant has been operating his taxicabs without the required radio transceivers and when the U.S. Navy Authorities of Subic Bay, Philippines, were pressing defendant for compliance with his commitments with respect to the installations of radio transceivers on his taxicabs, he impliedly laid the blame for the delay upon the plaintiff herein, thus destroying the reputation of the plaintiff herein with the said Naval Authorities of Subic Bay, Philippines, with whom plaintiff herein transacts business;

14. That on March 27, 1973, plaintiff wrote a letter thru his counsel, copy attached marked as Annex 'E', to ascertain from the defendant as to whether it is his intention to fulfill his part of the agreement with the plaintiff herein or whether he desired to have the contract between them definitely cancelled, but defendant did not even have the courtesy to answer plaintiff's demand;

15. That the defendant herein entered into a contract with the plaintiff herein as set forth in Annex 'A' without the least intention of faithfully complying with his obligation is thereunder, but he did so only in order to obtain the concession from the U.S. Navy Exchange, Subic Bay, Philippines, of operating a fleet of taxicabs inside the U.S. Naval Base to his financial benefit and at the expense and prejudice of third parties such as the plaintiff herein;

16. That in view of the defendant's failure to fulfill his contractual obligations with the plaintiff herein, the plaintiff will suffer the following damages:

[a] As the radio transceivers ordered by the defendant are now in the hands of the plaintiff's Japanese representative, the plaintiff will have to pay for them, thus he will have to suffer as total loss to him the amount of P523,938.98 (converting the amount of \$77,620.59 to pesos at the rate of P6.75 to the dollar) as said radio transceivers were purposely made or manufactured solely for the use of the defendant herein and cannot possibly be marketed by the plaintiff herein to the general public;

[b] The amount of P 52,393.89 or 10% of the purchase price by way of loss of expected profits from the transaction or contract between plaintiff and the defendant;

[c] Loss of confidence in him and goodwill of the plaintiff which will result in the impairment of his business dealings with Japanese firms, thereby resulting also in loss of possible profits in the future which plaintiff assess at no less than P200,000.00;

[d] That in view of the defendant's bad faith in inducing plaintiff to enter into the contract with him as set forth hereinabove, defendant should be assessed by his Honorable Court in favor of the plaintiff the sum of P200,000.00 as moral and exemplary damages;

[e] That in view of the defendant's fault and to protect his interests, plaintiff herein is constrained to retain the services of counsel with whom he agreed to pay by way of attorney's fees the sum of P50,000.00".

Respondent Guerrero filed a motion to dismiss said complaint for lack of cause of action, which ground is propounded by respondent's counsel thus: <sup>2</sup>

... it is clear that plaintiff was merely anticipating his loss or damage which might result from the alleged failure of defendant to comply with the terms of the alleged contract. Hence, plaintiff's right of recovery under his cause of action is premised not on any loss or damage actually suffered by him but on a non-existing loss or damage which he is expecting to incur in the near future. Plaintiff's right therefore under his cause of action is not yet fixed or vested.

Inasmuch as there is no other allegation in the present Complaint wherein the same could be maintained against defendant, the present Complaint should be dismissed for its failure to state a cause of action against defendant.

The respondent judge, over petitioner's opposition, issued a minute order dismissing the complaint as follows: <sup>3</sup>

Acting upon the 'Motion to Dismiss' filed by the defendant, through counsel, dated June 7, 1973, as well as the opposition thereto filed by the plaintiff, through counsel, dated June 14, 1973, for the reasons therein alleged, this Court hereby grants said motion and, as prayed for, the complaint in the above-entitled case is dismissed.

SO ORDERED.

Both parties are in accord with the view that when a motion to dismiss is based on the ground of lack of cause of action, the sufficiency of the case of action can only be determined on the basis of the facts alleged in the complaint <sup>4</sup>; that the facts alleged are deemed hypothetically admitted, including those which are fairly deducible therefrom <sup>5</sup>; and that, admitting the facts as alleged, whether or not the Court can render a valid judgment against the defendant upon said facts in accordance with the prayer in the complaint <sup>6</sup>.

After a thorough examination of the complaint at bar, We find the test of legal sufficiency of the cause of action adequately satisfied. In a methodical and logical sequence, the complaints recites the circumstances that led to the perfection of the contract entered into by the parties. It further avers that while petitioner had fulfilled his part of the bargain [paragraph 8 of the Complaint], private respondent failed to comply with his correlative obligation by refusing to open a letter of credit to cover payment of the goods ordered by him [paragraphs 11 & 12 of the Complaint], and that consequently, petitioner suffered not only loss of his expected profits, but moral and exemplary damages as well. From these allegations, the essential elements of a cause of action are present, to wit: [1] the existence of a legal right to the plaintiff; [2] a correlative duty of the defendant and [3] an act or omission of the defendant in violation of the plaintiff's right, with consequent injury or damage to the latter for which he may maintain an action for recovery of damages or other appropriate relief. <sup>7</sup>

Indisputably, the parties, both businessmen, entered into the aforesaid contract with the evident intention of deriving some profits therefrom. Upon breach of the contract by either of them, the other would necessarily suffer loss of his expected profits. Since the loss comes into being at the very moment of breach, such loss is real, "fixed and vested" and, therefore, recoverable under the law.

Article 1170 of the Civil Code provides:

Those who in the performance of their obligation are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof are liable for damages.

The phrase "in any manner contravene the tenor" of the obligation includes any illicit act or omission which impairs the strict and faithful fulfillment of the obligation and every kind of defective performance. <sup>8</sup>

The damages which the obligor is liable for includes not only the value of the loss suffered by the obligee [*daño emergente*] but also the profits which the latter failed to obtain [*lucro cesante*]<sup>9</sup>. If the obligor acted in good faith, he shall be liable for those damages that are the natural and probable consequences of the breach of the obligation and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted; and in case of fraud, bad faith, malice or wanton attitude, he shall be liable for all damages which may be reasonably attributed to the non-performance of the obligation<sup>10</sup>.

The same is true with respect to moral and exemplary damages. The applicable legal provisions on the matter, Articles 2220 and 2232 of the Civil Code, allow the award of such damages in breaches of contract where the defendant acted in bad faith. To Our mind, the complaint sufficiently alleges bad faith on the part of the defendant.

In fine, We hold that on the basis of the facts alleged in the complaint, the court could render a valid judgment in accordance with the prayer thereof.

ACCORDINGLY, the questioned order of dismissal is hereby set aside and the case ordered remanded to the court of origin for further proceedings. No costs.

SO ORDERED.

*Makasiar (Chairman), Concepcion Jr., Guerrero and A bad Santos, JJ., concur.*

*Aquino, J., is on leave.*

*De Castro, J., took no part,*

## Footnotes

1 Annex "A "of the petition.

2 Annex " B " of the petition.

3 Annex " D " of the petition.

4 Mindanao Realty Corp. vs. Kintanar, 6 SCRA 894.

5 Mathay vs. Consolidated Bank & Trust Co., 58 SCRA 559.

6 La Suerte Cigar & Cigarette Factory vs. Central Azucarera de Danao, 23 SCRA 686.

7 Mathay vs. Consolidated Bank & Trust Co., supra.

8 Arrieta vs. National Rice & Corn Corp., 10 SCRA 79.

9 Article 2200, Civil Code.

10 Article 2201, Civil Code.